

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 548 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
2 to 5 No
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STATE OF GUJARAT

Versus

MAHAMADALI NOORMAHAMAD

Appearance:

MR. AJ DESAI APP for Petitioner
SERVED for Respondent No. 1
MS SHILPA R SHAH for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/02/98

ORAL JUDGEMENT

1. Being aggrieved by order dated 10.9.1997 passed by Additional Sessions Judge, Ahmedabad City, in the proceedings of Case No. 156 of 1997, the State of Gujarat has filed the present Revision Application.

2. Vide impugned order, the learned Additional Sessions Judge has discharged the accused of the offence under Section 29 of NDPS Act and has directed the Investigating Officer to submit separate set of charge sheet and other necessary papers in the court for two separate trials.

3. The Police Inspector Shri S.K. Chauhan of Narcotic Cell received information on 5.5.1997 that two persons are selling Opium behind R.C. High School near Gheekanta. The description of the said two persons were also given by the informer and thereby after intimating the Superintendent of Police, Narcotic Cell, about the information received, he raided the place and arrested respondents No.1 and 2 with muddamal and prepared panchnama as he was satisfied that substance in possession of respondent at relevant time is contraband under the provisions of NDPS Act. On completion of investigation, respondents were chargesheeted for having committed the offence under Sections 8(c) 22 and 29 of the NDPS Act, 1985, and were produced before the Sessions Court, Ahmedabad. That the matter is registered as Session Case No. 156 of 1997.

4. That the present respondent No.2 who was cited as accused No.2 in the said case, has moved an application, claiming discharge from the charge of offence made punishable under Section 29 of the NDPS Act. That the

said application was opposed by the learned PP. However, vide order dated 10.9.1997, learned Additional Sessions Judge has allowed the application and has passed the order as stated hereinabove.

5. Shri A.J. Desai, learned APP appearing on behalf of the petitioner has contended that learned Additional Sessions Judge has committed an error in appreciating the facts apparent from the material produced with the charge sheet inasmuch as to the extent that both the accused were arrested at the same time, from a same place, possessing similar contraband on receipt of information, and as such, either they were acting in conspiracy or have abated each other in committing the said crime. He has further submitted that there cannot be a direct evidence to establish a conspiracy. It is necessary to record evidence so that a fair inference of conspiracy could be drawn from facts proved. That the material produced before the Court did disclose sufficient ground to frame charge against both the respondents under Section 29 and thereby impugned order should be set aside

and quashed.

6. Ms. Shilpa R. Shah, learned advocate appearing on behalf of Respondent No.2 has supported the order and has vehemently urged that there is nothing in the material produced along with the charge sheet to connect respondent No.1 with respondent No.2 with regard to the

offence made punishable under Section 29 of the NDPS Act. That joint trial of respondents No. 1 and 2 is likely to cause great prejudice to the defence of respondent No.2 and thereby learned Additional Sessions Judge has rightly accepted the plea and has passed the impugned order directing the Investigating Officer to file two separate chargesheets for separate trials.

7. I have carefully gone through the order produced on record vide page Nos 6 to 10. I do not find any jurisdictional error or procedural irregularity. The learned Additional Sessions Judge has rightly applied the law to the facts placed before the court through material produced with the charge sheet and has rightly come to the conclusion that the material produced before the court is not sufficient to connect accused No.1 with accused No.2 either in conspiracy or by abatement in commission of the offence made punishable under Section 22 of the NDPS Act. That the order passed by the learned Additional Sessions Judge being just and proper, in my opinion, no interference is warranted.

8. On the basis of above stated discussion, Criminal Revision Application No. 548 of 1997 stands disposed of as rejected. Rule is discharged. Interim relief granted earlier stands vacated. In the facts and circumstances of the case, no order as to costs.

p.n.nair